In the High Court of Punjab and Haryana, at Chandigarh.

1. **Civil Writ Petition No. 2739 of 2001**

Date of Decision: 6.11.2008

Subhash Chander

…Petitioner

Versus

Haryana State Agricultural Marketing Board, Panchkula.

…Respondent

2. **Civil Writ Petition No. 11278 of 1999**

Nar Singh and Another

…Petitioners

Versus

Haryana State Agricultural Marketing Board, Panchkula and Others

…Respondents

3. **Civil Writ Petition No. 11589 of 2000**

Prem Singh and Others

…Petitioners

Versus

State of Haryana and Others

…Respondents

4. **Civil Writ Petition No. 5164 of 2001**

Subhash Chander

…Petitioner

Versus

State of Haryana and Another

…Respondents

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.

Present: Mr. Gulshan Sharma, Advocate
for the petitioner (in Civil Writ Petitions No.2739 of 2001)

Mr. Suman Jain, Advocate
for the petitioners (In Civil Writ Petition No.11278 of 1999)

Mr. D.S.Patwalia, Advocate
for the petitioners (In Civil Writ Petition No.11589 of 2000)

Mr. Yogesh Goyal, Advocate
for the petitioners (In Civil Writ Petition No.5164 of 2001)

Mr. Subhash Ahuja, Advocate,
for respondent No. 1 in Civil Writ Petitions No. 2739 of 2001 and No. 11278 of 1999, for respondents No.1 & 2 in Civil Writ Petitions No. 11589 of 2000, and 5164 of 2001.

Mr. Satbeer Godara, Advocate
for respondents No.3 & 4 in Civil Writ Petition No. 11589 of 2000.

Mr. Vijay Pal Singh, Advocate
for respondents No.5 to 7 in Civil Writ Petition No. 11589 of 2000.

Mr. H.S.Gill, Senior Advocate, with
Mr. Vivek Goyal, Advocate,
for respondents No.2 and 4 In Civil Writ Petition No. 11278 of 2001.

Kanwaljit Singh Ahluwalia, J. (Oral)

By this common judgment, four Civil Writ Petitions bearing Nos. 2739 of 2001, 11278 of 1999, 11589 of 2000 and 5164 of 2001 will be decided.

Learned counsel for the parties are in agreement that the facts can be taken from Civil Writ Petition No. 2739 of 2001 preferred by Subhash Chander against Haryana State Agricultural Marketing Board, Panchkula (hereinafter referred to as "the Board").

On 16.7.1991, the Board advertised 11 posts of Assistant Secretaries. Out of this six posts were for General category, three posts were reserved for Scheduled Caste category, and two posts were reserved for Backward Class category. Petitioners in all the four writ petitions applied for these posts. They were interviewed from 29.10.2001 to 31.10.1991. 16 persons were selected. A grievance was made that some of the selected persons were not eligible and were not possessing requisite qualification. It was stated that they were lacking three years experience in Government or Semi Government Organization. Unsuccessful candidates preferred writ petitions in this Court. Civil Writ Petition No.14229 of 1993 was preferred by Subhash Chander and the same was decided along with a bunch of 12 writ petitions. A judgment was pronounced in a case of ***Om Parkash & Others v. The Haryana State Agricultural Marketing Board and Others (Civil Writ Petition No. 1465 of 1992).*** The writ petition was decided on 2.1.1995 and learned Single Bench of this Court passed the following order:-

> "I have heard counsel for the parties. While it is the prerogative of the employer to lay down qualifications for a post, it appears to be equally clear that such qualification must have a reasonable relation to the job requirements and only those who fulfill the prescribed qualification should be appointed. In the present case, the advertisement specifically provided that the candidate must have besides the academic qualification three year's experience in a Govt. Office or a semi-government

body. A person who did not fulfill this qualification should obviously not be eligible to be considered for appointment. Further, the report sent by the Assistant Registrar clearly shows that the Selection Committee had considered person who did not actually fulfill this qualification. In this situation one view can be that the whole selection is vitiated. However, as has been rightly pointed out by the learned counsel for the respondents, it may not be fair to upset the entire selection on the basis of the report of the Assistant Registrar especially when it has even been stated that the selected candidates had been given an opportunity to put forth their view point. In this situation, it appears to be just and proper to remit the matter to the Chief Administrator of the Board. Who will examine the factual position with regard to each selected candidate in writing. If on consideration of the material as may be produced by the petitioner, the Chief Administrator finds that there are doubts regarding the eligibility of one or the other countries, he would give an opportunity to that candidate to show that he fulfilled the qualifications. Thereafter, the respondent shall decide the matter finally by passing a speaking order. In case it is found that a person who did not fulfill the prescribed qualification has been selected, the selection and appointment of

> such persons shall stand quashed. The needful shall be done within three months from the date of the receipt of a copy of this order".

In view of the orders passed by this Court, in the writ petition preferred by the petitioner on 2.1.1995, the Board had constituted a Committee of Officers to verify the age, academic qualification and experience of selected candidates. One of the candidates Jagroop Singh who was from the Scheduled Caste category had resigned. All the 15 candidates were asked to appear before the Committee and were asked to produce documents in this regard. The Committee came to conclusion that out of 15, four candidates namely, Krishan Kumar, Manohar Lal, Rajinder Kumar and Charanjit Singh were not eligible. Out of these four candidates, Manohar Lal and Rajinder Kumar belonged to General Category. It is not disputed that all the four petitioners here belong to General Category. The order of learned Single Bench of this Court was challenged in Letters Patent Appeal and the same was dismissed and, therefore, subsequently, Special Leave Petition was filed against the judgment of this Court. The same was converted into Civil Appeal Nos. 14910 to 14911 of 1996. Hon'ble the Apex Court concluded as under:-

> "Accordingly, we direct that for the vacancies which have occurred the case of the appellants along with others be considered in accordance with law. The claim for being appointed to the post in question shall not be rejected on the ground of age bar because they have been pursuing the remedy before the Court of law. The appeals are

accordingly disposed of. No costs".

Thereafter, in view of the observations of Hon'ble the Apex Court, fresh interviews were held. Petitioner Anup Singh filed Civil Misc. No. 2406 of 1997 in Civil Writ Petition No. 8944 of 1996 and he was allowed to participate in the interview. That application was disposed off in terms of order passed by Hon'ble the Apex Court, reproduced above, and thereby the petitioner had appeared in the interview. Petitioner Anup Singh had subsequently appeared in the interview which were held from 29.7.1997 to 12.8.1997. Petitioner Subhash Chander appeared on 5.8.1997 in the interview. Claim of the petitioner is that when earlier (first) interview was held, he was on waiting list at No.1 vide Annexure P11. In the fresh interview held petitioner was not successful. Therefore, the appointment was given to one Radhey Shyam or Radha Krishan. Petitioner was not again satisfied. He filed another Civil Writ Petition bearing No. 15658 of 1999. This was the third writ petition, which was preferred by the petitioner. The same was dismissed by Division Bench of this Court by passing the following order:-

> "The petitioner had approached this Court as far as back in October, 1999, seeking a rightful implementation of the order dated 22.11.1996 (Annexure P3) passed by the Supreme Court. On 5.11.1999, the instant writ petition came to be adjourned on the request of learned counsel for the petitioner with a direction that the same be listed only after an appropriate application was filed in that behalf by the learned counsel for the petitioner.

> Despite the passage of more than six years, no such application was filed. Consequently the main case has been listed by the Registry of this Court. During the course of hearing, learned counsel for the petitioner informs us that a review application filed by the petitioner in the matter, which came to be adjudicated by the Supreme Court, has since been dismissed on 13.12.1999. It is, therefore, apparent that the order appended to the writ petition, Annexure P3, has attained finality. The order Annexure P3 has since been implemented conducting the fresh process of selection. We find no justification and ground to interfere.
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> Dismissed".

Claim of the petitioner in the present case is that after the interview was held, a representation was submitted by two persons namely Anoop Singh and Om Parkash. It has been further stated by the petitioner that review petition filed by these persons and a contempt petition preferred was also dismissed by Hon'ble the Apex Court, whereas the stand of the respondent-Board is that a contempt petition was dismissed with liberty to take appropriate alternative remedy, therefore, claim of Anoop Singh and Om Parkash was considered in a statutory revision petition and as per the orders of the revisional Authority, fresh interviews were held in the year 2000. The case of the Board is that the present petitioner along with successful candidates Anoop Singh and Om Parkash appeared in the interview. After the

interview was held, Om Parkash and Anoop Singh were selected and the present petitioner could not succeed in the interview.

Mr. Gulshan Sharma, Advocate, appearing for the petitioner has made three fold submissions. He has firstly stated that when the initial interview was done in the year 1991, the petitioner was placed in waiting list at Serial No.1, therefore, subsequent interviews in the year 1997 and 2000 were held as camouflage and to select the persons who were the favourites of the Selection Committee. Secondly, it has been submitted that still 105 posts are lying vacant, therefore, petitioner can be adjusted and appointed against the vacancies. Thirdly, it has been submitted that a civil suit filed in the year 2002 by a person belonging to the Scheduled Caste Category was decreed and he was ordered to be adjusted against the post of Jagroop Singh, who out of the Scheduled Caste category had resigned and therefore, on the same analogy petitioner can also be appointed.

Having given thoughtful consideration to his arguments, I am of the view that these arguments cannot be accepted. Admittedly, the first interview was held in the year 1991. Normally a panel of selectees remain valid for one year. In the present case, 17 years are going to pass and this is a fourth round of litigation by way of which, panel of selection is sought to be kept alive. Petitioner had appeared in two interviews subsequently. One interview was held taking into account the observations of Hon'ble the Apex Court. Second interview was held when the Board Authorities wanted to save themselves from contempt and on the liberty granted to Anoop Singh and Om Parkash in a statutory revision filed, Revisional Authority ordered that the fresh interview would

be held. Petitioner having participated in the interview in the year 1997 and 2000 cannot state that since in 1991 he was put in the waiting list at Serial No.1 and, therefore, his claim should be considered from that aspect. Further in successive spells claimant had set up a claim and such a claim was considered by the Court and was rejected, if now same is permitted, this will be fraught with the dangerous consequences. There will be no finality to any interview. Third submission that in a civil suit filed by one Hawa Singh, after the resignation of Jagroop Singh, he was appointed in that place, it will be pertinent to mention that the suit was instituted in the year 1998 and in that decision was taken only qua Hawa Singh and petitioner cannot claim any benefit of the fact that suit of another person belonging to Scheduled Caste category was decreed. The petitioner had approached this Court earlier on two occasions and had also filed a review petition. Having remained unsuccessful he cannot urge that he be grated benefit which was bestowed upon Hawa Singh by a Civil Court. The petitioner has further placed reliance upon Annexure P15 i.e. ***Civil Writ Petition No. 8612 of 1991 titled as "Satbir Singh and Another v. Haryana State Agricultural Marketing Board decided on 4.5.1994***. In that case, regarding the appointment of Mandi Supervisors, this Court had observed that the persons in the waiting list have the prior right over and above unsuccessful candidates who were given benefit without their preferring writ petition. In view of the checkered history which has been narrated above, the ratio of judgment cited Annexure P15 will not be available to the present petitioner.

After having noticed facts and the arguments made in Civil Writ Petition No. 2739 of 2001, I proceed to notice additional plea raised by

other petitioners.

In Civil Writ Petition No. 11589 of 2000, learned counsel for the petitioner has stated that even though material facts are same, but it be noticed that he has not come to this Court after the decision of Hon'ble the Supreme Court. Be as it may, but the petitioner had participated in two subsequent interviews held in the years 1997 and 2002, respectively.

Mr. Patwalia has stated that respondents Anoop Singh and Om Parkash filed a review petition in the case of Manohar Lal and then reply was filed by the respondent-Board and Board had taken the following stand:-

> "13. That in reply to para No.13, it is submitted that the contention of the review petitioner for not considering the direction issued by this Hon'ble Court for long is not correct. In this connection, it is submitted that in accordance with the directions of this Hon'ble Court given in appeal No. 14910-11/96, the review petitioner was called for interview for the post of Assistant Secretary on 7.8.97 and he appeared before the Interview Committee but could not be given appointment having found unsuitable for the post of Assistant Secretary by the Interview Committee. Thereafter, the review petitioner had filed a contempt petition No. 313-314/1997 which was dismissed by the Hon'ble Court. It is also incorrect that Shri Krishan Kumar had obtained order for his reinstatement through C.A. No. 2383 of 1996. In fact

> he was given fresh appointment on the direction of this Hon'ble Court in CA No. 2783 of 1996. Rest of the contempt of this para are admitted being matter of record".

Having read the above portion, to buttress his arguments, Mr. Patwalia has stated that once the Board held that respondents Anoop Singh and Om Parkash were found unsuitable and their review application was dismissed by the Court holding a subsequent interview smack a malafide on the part of the respondent-Board and that only on the basis of representation.

As noticed earlier, during the pendency of contempt petition, these respondents were granted liberty to avail alternative remedy. They had invoked the revisional jurisdiction and Revisional Authority had ordered that fresh interview be held. Petitioners have participated in that interview. Therefore, the petitioners, as stated earlier, cannot find defects in the selection process. Therefore, for the reasons stated above, this plea raised by Mr. Patwalia is also liable to be rejected.

To counter the argument of Mr. Patwalia, it has been stated by learned counsel for the Board that Prem Singh, petitioner No.1 to Civil Writ Petition No. 11589 of 2000 had also filed a Civil Writ Petition No. 8612 of 1991, which was disposed off.

In Civil Writ Petition No. 5164 of 201, in case of another Subhash Chander, learned counsel has raised another argument that he has stated that on representation made by him vide Ex.P13, the Chief Secretary passed the order in the presence of the officials of the Mandi Board that supernumerary posts be created and petitioner be appointed

as Assistant Secretary. Perusal of Annexure P13 shows that it was passed on the desire of the Chief Minister. In case the Chief Secretary wanted to dole out largesse, it was for the petitioner to make claim before those officials and not from the Court, which is bound by parameters of law.

In the Civil Writ Petition No. 11278 of 19999, no additional argument has been raised.

Therefore, for the reasons stated above, all these writ petitions are dismissed.

(Kanwaljit Singh Ahluwalia)
Judge

November 6, 2008
"DK"